

DEPARTMENT OF MARINE RESOURCES

Chapter 42 - Striped Bass

42.01 Statewide Striped Bass Size Restrictions, Harvest Methods

1. Method of Taking.

- A. It is unlawful to fish for or take striped bass in ~~the waters of the state~~ territorial waters, except by hook and line. It is unlawful to use a gaff to land any striped bass.
- B. It is unlawful to use multiple (more than two) barbed or barbless treble hooks on any artificial lure or flies while fishing for striped bass in territorial waters.
- C. It is unlawful to use treble hooks when using bait.
The following becomes effective January 1, 2013:
It is unlawful to use any hook other than a circle hook when using bait. For purposes of this chapter the definition of circle hook means "a non-offset hook with a point that points 90° back toward the shaft of the hook".
- D. Any striped bass legally taken from the territorial waters shall be immediately released alive into the water from which it was taken, or killed at once. Any striped bass killed becomes part of the daily bag limit in accordance with Chapter 42.02.

2. Size Restrictions.

It is unlawful to take or possess striped bass which are less than 20 inches long or greater than 26 inches total length but less than 40 inches total length. It is unlawful to possess striped bass unless the fish are whole with head on and are between 20 and 26 inches total length or 40 inches and greater total length.

42.02 Striped Bass - Limits, Personal Use

It is unlawful for any person to fish for, ~~or take or possess~~ striped bass in ~~or from territorial waters the waters of the state~~, except for personal use. The sale of wild striped bass caught for personal use or by commercial fisheries in other States or jurisdictions is prohibited in the State of Maine.

It is unlawful for any person to take or possess more than one (1) striped bass each day which may be between 20 and 26 inches in total length or 40 inches or greater in total length.

Note: No other changes are proposed in Chapter 42.

Basis Statement

Chapter 42 Striped bass

The Department is required to work within the framework provided by the ASMFC Management Plan that limits options when considering state management plan changes and has explored rule changes that could protect striped bass, including native striped bass populations in Merrymeeting Bay and provide positive recreational angling opportunities for those that fish for striped bass. Fishing for striped bass with bait is an efficient means of catching striped bass during the spring, summer, and fall and a popular method of catching all sizes of striped bass. There is an area closure where bait and gear type are regulated during the spawning season to limit the effects of bait fishing and hooking mortality on native fish during the spawning season.

One area where improved conservation could occur is reduction of the discard mortality for striped bass caught and released by recreational anglers. The discard mortality (delayed hook and release mortality) rate used by the Atlantic States Maine Fisheries Commission is .08% of fish caught and released. For the years 2003 to 2009, the average discard mortality in Maine is 119,817 striped bass. In 2008 discard mortality for striped bass in Maine was 37,079 individuals. (These data are based on the data presented during an ASMFC 2009 Stock Status Update.) Reducing the discard mortality will have a conservation effect for all ages including large striped bass >40 inches.

Studies indicate that mortality with the use of circle hooks is as low as 0.08, or less than 1%. One of the best studies conducted may be found online at <http://www.dnr.state.md.us/fisheries/recreational/articles/crsb.html>.

This was a Maryland Coastal Conservation Association (CCA), Maryland Charter Boat Association, and Maryland Saltwater Sportsman Association Study. The results for striped bass was 9.7% overall mortality for J hooks, 0.8% for circle hooks, overall. Regarding multiple treble hooks, based on angler and staff observations the amount of handling time is clearly increased when 3 hooks or greater are used. This does result in increased injury and subsequent increase in discard mortality. Using estimates for ease of presentation, 8% of ~450,000 caught and released is ~36,000 additional striped bass killed based on current catch and release mortality rates. The switch to circle hooks based on the study cited above would reduce the number of ~36,000 to ~3,600, saving ~30,000 striped bass. (Also see 2008, in the table below in the response to #10 in the summary of comments.)

It is the Department's position that these conservation measures are necessary and takes into consideration requests to allow tackle inventory to be sold (similar to the process used when converting from lead sinkers to less toxic sinker materials that lessen or eliminated the tackle shop's economic impact); and to use the next two seasons as a period for education of the public and guides, plus address the use of bait on treble hooks to reduce deep-hooking mortality, Chapter 42.01(1)(C) would be modified to delay the use of bait on hooks other than circle hooks until January 1, 2013. Plus, during the interim period, as suggested by comment, the use of bait on treble hooks would be prohibited, thus giving an interim period to adjust to the new restrictions. These modifications are not considered substantive changes to the proposed rules as they offer a mechanism to find a balance to the range of comments and suggestions.

Summary of Comments

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Public hearings were held November 15 and 16, 2010 in Rockland and Yarmouth respectively. The summarized comments and Department's responses follow the list of hearing attendees and persons who submitted written comments. The individual summarized comments are in a separate document.

Hearing attendees, Rockland

Doug Jowett, Brunswick
George Warren, Edgecomb
David Allen, Washington
Barry Gibson, E. Boothbay
Rep. Jon McKane, District 51
Sen. Chris Rector, Thomaston, District 22
Pete Ripley, E. Boothbay
Bill Spencer, Boothbay Harbor
Jeff Bellmore, Warren
DMR: Dep. Comm. David Etnier, Deirdre Gilbert, Pat Keliher, L. Churchill

Hearing attendees, Yarmouth

Forrest Faulkingham, Alna, Maine Association of Charterboat Captains
Andrew Mazzitelli, North Berwick
Don Kleiner, Union
Doug Jowett, Brunswick
Steve Heinz, Cumberland Foreside, angler
David Huntress, (Stantec), angler
Mac McKeever, (LL Bean), angler
Dana Eastman, town?
Mike Jannvil [sp?], town?
Jerry Rideout, town?
Matt Boutet, [sp?], town?
Don Russell, town?
Duncan Barnes, town?, angler
DMR: Dep. Comm. David Etnier, Deirdre Gilbert, Pat Keliher, L. Churchill

Written comments

Doug Jowett, Brunswick
Maine Association of Charterboat Captains, Capt. Dave Pecci, Fisheries Committee Chair
Brad Burns, Falmouth
Brian Potvin, Wyman
Capt. Harvey Wheeler, Cumberland Foreside
Coastal Conservation Association, Maine Board of Directors, Mac McKeever – Maine Pres.
Chris Pecar, Phippsburg
Craig Gilliam, Brunswick
Dan Beetz, York Harbor
David Barrell, Quechee, VT
Dennis Beauchene, Cape Neddick
E. Carle Hildreth, III, Portland
Eric Brown, TOWN
Fred Cichocki, PhD, TOWN
George P. Little, Topsham and South Bristol
George Watson, Cape Elizabeth
Gordon Thompson, Kittery Point
Greg Renna, Portland
John R. Ehrenfeld, Lexington, MA and Brunswick, ME
Larry Grimard, Jefferson
Larry Steinbrecher, San Diego and Maine
Lord Macauley, Brunswick
Michael Jaffe, Los Angeles and Pemaquid, ME
Maine Professional Guides Association, Don Kleiner, Exec. Dir., Wilton

Oliver Dominick, Phippsburg
Ray Loszewski, Windham
Rolfe Gerhardt South Thomaston
Russell Smith, Phippsburg
Frank Walls, NY Chapter President Stripercoast Surfcasters Club (SSC)
Frank La Natra, Long Island, NY (SSC)
Jacob Freeman, New Bedford, MA (SSC)
James Zadubara, Hartford, CT (SSC)
Jeff Bodnar, Cresco, PA (SSC)
Joseph Loreti, TOWN, STATE (SSC)
John Meadows, Whitinsville, MA (SSC)
Khary Richardson, Brooklyn, NY (SSC)
Peter Douma, Wyckoff, NJ (SSC)
Sonny Simpson, Yardville, NJ (SSC)
Tyson Eng, TOWN, STATE (SSC)
Mark R. Pirani, Worcester, MA (SSC)
Steven Kundrot, Belmont, MA and Harrison. ME
Todd Stewart, Saco
Tony Owens, Cape Elizabeth
William A. Young, Pres. NY Coalition for Recreational Fishing

Summarized comments and responses:

1. Hooks

Treble Hook Limitations 42.01(1)(B) - request modification. Removing hooks from lures causes many of them to swim incorrectly. We would like the option of replacing treble hooks with single hooks. This will allow lures like Bomber, Rebel, Yozuri and others with three or more hooks to swim correctly.

- Lure companies spend millions of dollars on ...when you modify that lure by changing how many hooks are on it you change the weight on it then you're trying to add subtract multiply to get that lure to fish the way it should again. DMR is not in the tackle business.

- Removal of an additional treble hook from a lure is of dubious value and has no scientific basis.

Response:

Anglers may still use two treble hooks and only need to remove or modify a single hook.

Anglers could also simply use 3 single hooks or modify hooks by cutting off the bend.

Comments also indicated this type of modification did not necessarily affect how the lures or flies fished.

Circle Hooks 42.01(1)(C): MACC request modification that this proposed circle hook regulation only pertain to still fishing and drift fishing.

Response:

This would lead to species specific hook regulations as well as method specific hook rules and is therefore considered not enforceable.

Hooks continued:

Education: Circle hook/bait proposals will be difficult to enforce and might either be dropped or delayed in order for DMR to first launch an educational campaign. Versus, DMR has, unfortunately chosen to mandate rather than educate; to use an educational/outreach program regarding the use of circle hooks.

Ban baited treble hook: The use of baited treble hooks for stripers [and bluefish] should be banned as soon as possible to reduce deep-hooking mortality, and we ask DMR to add specific language to that effect in its rule-making proposals. Versus, oppose requiring circle hooks while using bait.

Tackle shop hook inventory; could we have a year to get rid of hook inventory that is in stock? Similar to lead, we had 2 years to get rid of the lead; or have the rules state we can't buy them anymore but may sell out what we've got.

Response:

The Department acknowledges the impact from the restriction of multiple treble hooks (more than 2) however, few lures or flies have more than 3 hooks; and based on angler and staff observations the amount of handling time is clearly increased when 3 hooks or greater are used. This results in increased injury, handling, and subsequent increased mortality. The rules would require that only one of the three treble hooks be removed or modified.

It is the Department's position that these conservation measures are necessary and based on the requests to allow tackle inventory to be sold similar to when lead was banned; and to use the next season as a period for education of the public and guides, plus address the use of bait on J hooks to reduce deep-hooking mortality, Chapter 42.01(1)(C) would be modified to delay the use of bait on hooks other than circle hooks until January 1, 2013. Plus, during the interim period, as suggested in the comment listed above, the use of bait on treble hooks would be prohibited.

2. Why is this necessary?

Maine already has the most restrictive bag limit, size limit, regulations for no gaffs, immediately release and huge closures. Now we're adding more restrictions. The registry, the closure in the Kennebec, additional fines are taxes. This will put more regulations on us than any other state on the east coast for no reason. Why release fish that may be caught and even sold south of here?

Response:

Current bag and size limits are equivalent to other states based on the ASMFC Conservation equivalency program. Maine fishermen are permitted to take fish smaller than the 28" recreational size limit in place for coastal waters in most states. These rules will further protect any resident/native striped bass and allow a larger percent of striped bass that would have died to spawn the following spring. Releasing slot sized fish, which are illegal for recreational fishermen to take in most states south of Maine, adds to the spawning stock biomass the following year.

- Explain where this all is coming from; the background.

- The use of the term 'many' [in reference to the scoping meetings] is deceptive in that it can be interpreted any way one sees fit. How many is many?

Response:

During the month of February, 2010 the Maine Department of Marine Resources held two striped bass scoping meetings to discuss recreational angler concerns of declining striped bass catches in Maine and most states along the East Coast. At these meetings the majority of the public sentiment was to see the Department move forward with hook restrictions, including the limiting the use of treble hooks for bait fishing and requiring the use of circle hooks .

- Is there a scientific basis for these changes?

There is science supporting the use of circle hooks. Studies indicate that mortality with the use of circle hooks can be as low as 0.08 or less than 1% for in-line circle hooks. One of the best studies conducted may be found at the following web link:

<http://www.dnr.state.md.us/fisheries/recreational/articles/crsb.html>

This was a Maryland Coastal Conservation Association (CCA), Maryland Charter Boat Association, and Maryland Saltwater Sportsman Association Study. The results for Striped bass was 9.7% overall mortality for J hooks, 0.8% for circle hooks, overall.

Regarding multiple treble hooks, based on angler and staff observations the amount of handling time is clearly increased when using three or more treble hooks. This results in increased injury and subsequent increases in mortality.

Also, using rough numbers (see 2008, in the table below in #10), 8% of ~450,000 caught and released is ~36,000 killed or the catch and release mortality. The switch to circle hooks based

on the study cited above would reduce the mortality of striped bass caught and released from 36,000 to 3,600, saving ~30,000 striped bass.

3. Limiting access

The proposed hook rules add another layer of restriction to public access to the striped bass resource over and above everything else that is already on the books and I'm not sure that actually does anything. The proposed regulations do little to restore the striper and or bluefish fisheries but rather seek to limit recreational access to the fishery.

Response:

Cutting off a hook, modifying a hook, or removing a hook to not allow the use of more than 2 barbed or barbless hooks, does not remove access to the resource.

4. Hook changes would hurt guide business, exemption requested:

As a guide my regular customers don't mind missing the fish because they are not there just to hook the fish and have the fish hook itself and reel it in. If forced to use circle hooks it is a dead stick type fishery and I'm sunk, I'm going to lose business to Massachusetts or NH where they are allowed to keep the 28's and up. Licensed guides should be exempt.

Circle hook, J hook, it's the fisherman not the hook. Some persons fish with bait on a circle hook and do a fantastic job. But if you're fishing live bait with a circle hook and that person is not good they yank that rod too soon every time, clients get real upset. They want to set the hook.

Response:

Circle hooks are designed to hook the side of the mouth. The issue of fishing techniques will be addressed through a two-year education campaign. See #1.

There is no evidence in other fisheries where circle hooks are required that participation in the fishery has diminished.

5. Enforcement

If fishing with a J hook and a warden comes along the line will just be sniped and it is gone. It will be almost impossible for a warden to enforce the hook rules.

DMR should not impose restrictions they don't have the manpower to enforce.

What is the opinion of Marine Patrol on the enforcement of the hook rules? Their response to these rules is missing.

Response:

The regulations were reviewed by Marine Patrol before going out for rulemaking and they support the rules.

We couldn't go forward with a circle hook regulation without including at least Bluefish to make it enforceable. Enforcement personnel understand that somebody could say I'm fishing for codfish. It will have to be a case by case situation and Marine Patrol will have to use their best judgment based on the situation. It is not a perfect regulation, we recognize that.

6. Lures

Artificial lures have been tank tested and when you start altering them they don't swim or fish right. The more hooks they have on them the harder they are for the fish to swallow. If you have 3 hooks on a rig they can't get them in their mouth. So now you want to go down to two so this would make it easier for the striper to swallow the whole rig.

Response:

If the fish is large enough to swallow all three hooks they most likely will swallow it anyway. See #1.

8. High grading

If the fish is legal and you're going to keep it, you're going to kill the fish, end of the story.

Support this proposed rule, it is very valid.

42.01(1)(D) - Immediate Kill of Catch: Support the immediate killing of legal catch as a way to address high grading. This is a proven approach in freshwater fishing.

Response: The Department concurs.

9. No sale, Chapter 42.02

MACC supports no sale.

Regarding no sale provision for striped bass in Maine isn't this already in the law now?

Response:

No. There was a bag limit but no prohibition on sale; it was a possession limit only.

Note: It is illegal to take striped bass from federal waters. A harvester cannot sell striped bass in Maine taken from Maine territorial waters (inside 3 miles). Striped bass taken from state waters in other states may be sold here as long as they conform to the Maine size and possession limits. In other words a restaurant in Maine could possess one 41" striped bass taken from Massachusetts state waters.

Questions and responses

10. Mortality statistics

- Explain the difference between the discard mortality and by-catch mortality?

Response:

The correct term to use is discard mortality, not bycatch mortality. These terms were used interchangeably in the document and should not have been. During the discussion at the Rockland hearing the statement was made that these terms were used in the same context. The discard mortality (delayed hook and release mortality) rate used by the Atlantic States Maine Fisheries Commission is .08 or <1% of fish caught and released. For the years 2003 to 2009, the average discard mortality is 119,817 striped bass. These data are based on the 2009 Striped Bass Stock Status update presented by ASMFC.

	2003	2004	2005	2006	2007	2008	2009	Average 2003-2009
Total Catch	904,473	785,274	3,092,929	4,135,406	1,176,790	519,409	274,290	1,555,510
Total Harvest	57,765	36,886	68,638	72,827	71,443	49,620	47,439	57,803
Discards	846,708	748,388	3,024,291	4,062,579	1,105,347	469,789	226,851	1,497,707
Discard Mortality	67,737	59,871	241,943	325,006	88,428	37,583	18,148	119,817

11. Kennebec closure

Circle hooks were suggested to open the Kennebec closure and were told there was no way to enforce it. There is no evidence really that circle hooks will make that much of a difference on the mortality or in effect on the stock of the entire east coast. We are at the end of the swim. The closure of the Kennebec River in May and June to bait fishing was based on concerns about released mortality of fish that were suspected that came into the Kennebec native population. If circle hooks are implemented we now have a gear type that shows a lower mortality rate than flies and plugs and lures. Will you be opening up the Kennebec and the Sheepscot Kennebec area to fishing with bait and circle hooks in May and June? You have less on the Penobscot and you didn't close that river.

Response:

It is something the Department can consider. We currently have little to no data on what the population of native striped bass is in the Kennebec River. The Department has taken a conservative approach to regulation while working to determine what the population of native striped bass is in the Kennebec. We did not close the Penobscot because it is not a historic spawning habitat.

The Department is willing to have discussions with users and fishing groups about the status of the Kennebec River regulations at a later time.

12. Modify hooks

On the plug hooks, if you took one of the 3 hooks and cut the hook in such a way that it would leave only the shank would that be legal?

Response:

The Departments' view is that a treble hook is no longer a treble hook if you're cutting the curve of the hook off. This has been in practice on the Kennebec River since the inception of the single hook regulation that is in place to protect native fish.

13. Photos

About releasing a fish immediately, released alive into the water, immediately released, does that mean you can't hold it up to take a photo of it?

Response:

Anglers may take pictures of their fish and release it back. Obviously if they were taking pictures and passing it around the boat this would be considered beyond the intent. Take a picture quickly and release the fish quickly overboard.

14. Alternative

Change the slot limit: Either go down to one fish to a certain size or a certain season? Circle hooks aren't going to save them. The next guy will take them.

Response:

Changing the slot limit or season is not biologically justified at this time. Because states to the south have coastal length limits greater than 28 inches these fish will not be harvested.

Individual summarized hearing and written comments are located in a separate document, see attached.